IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14220 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PRAKASH GOVINDBHAI MAKWANA (DETENU) THROGH MOTHER - Petitioner
Versus
COMMISSIONER OF POLICE AHMEDABAD & 2 - Respondents

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Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 30/08/2005

ORAL JUDGMENT

1. The present petition is preferred under Article 226 of the Constitution of India in order to challenge the order dated 25.06.2005 passed by the Commissioner of Police, Ahmedabad City, respondent no.1 herein, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, 'the PASA Act'), detaining the detenue under Section 2(c) of the said Act branding him as 'Dangerous Person'.

2. As per requirement of Sub-section 1 of Section 9 of the PASA Act, the grounds of detention have already been supplied to the

detenue alongwith the order of detention. The grounds of detention mention that the detenue is a 'Dangerous Person' as his activities are prejudicial to the maintenance of the public order. The detaining authority has referred to four different registered, against the detenue, with Ellisbridge Police, vide different crime registered numbers for the offences punishable under Sections 379, 356 and 114 of the I.P.C. The grounds of detention reveal that the detenue is indulging into chain snatching and creating terror amongst the people. The activity of the petitioner detenue is prejudicial to the maintenance of public order, inasmuch as he creates fear in a given cases indulging into fist fighting. Thus, creating an atmosphere of terror amongst the people at large. That these activities of the detenue is prejudicial and antisocial and, therefore, powers have been exercised under the Act.

3. The learned advocate for the detenue, has submitted that in the penultimate para of the order of detention dated 25.06.2005, it is stated by the detaining authority that the detenue is in judicial custody. As per the say of the detaining authority, it is stated that in event of detenue preferring bail application at any point of time, he is likely to be released on bail and likely to continue and indulge into similar antisocial activities thereafter. Due to the above referred possibilities, subjective satisfaction arrived at by the detaining authority is not result of reliance of credible and relevant materials existing at the time of passing the order of detention. The learned Advocate for the petitioner submitted that likelihood of moving an application of bail and the materials relied upon by the detaining authority for such possibilities is different than the detenue is likely to be released on bail. According to the

learned advocate for the petitioner there has to be specific and relevant materials before the detaining authority for appreciating the possibility and detenue being released on bail, on such materials and there is nothing on record showing that the authority has applied its mind to such materials mentioning about the the detenue getting enlarged on bail. According to the learned advocate for the petitioner even the affidavit in reply it is mentioned in para-9 that the authority was, though conscious about the detenue being in judicial custody and no reason is mentioned about what relevant materials did exist, arrived at the subjective satisfaction about the detenue being released by the Court, therefore, he relied upon two decisions as reported AIR 2000 SC 3675 dated 28th December, 2004 in Special Civil Application No.11585 of 2004 and submitted that the case is covered by the ratio laid down in both the above cases, and therefore, the order of

detention is required to be quashed and set aside.

4. The submissions being made by the learned Assistant Government Pleader to the effect that the detaining authority was conscious enough about the judicial custody of the detenue and looking to the nature of the offence, the subjective satisfaction arrived at by the detaining authority is not vitiated due to non application of mind.

5. Having considered rival submissions of the parties, I am likely to accept the submissions of the learned advocate for the petitioner for the reasons that the detaining authority has failed to explain the aspect about relevant materials on the basis of which the subjective satisfaction is reached, particularly for the fact about detenue being in judicial custody qua the offences registered, with Ellisbridge

Police Station vide c.r.No. I-375/05, against the detenue as narrated in the second part of the order of detention, mention that investigation continues and still to arrive at conclusion about grant of bail by the Court and release of the detenue on bail, indicates non application of mind on the part of the authority, vitiate subjective satisfaction and hence impugned order is illegal. Further, there must be cogent materials before the officer passing the detention order that the detenue is likely to be released on bail as per ratio laid down in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675, particularly in para:-4 wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. The Apex Court held that there must be cogent materials

before the officer passing the detention order that the detenue is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention.

The another decision has squarely covered the aspect reported at GLR 2003 (4) 2769 in the case of Usmangani Ismailbhai Minyana Vs. Commissioner of Police, Ahmedabad and ors. wherein it is stated in Para:5 that “From the grounds of detention and the affidavit in reply, it is spelt out and noticed that the detaining authority has passed the detention orders at the time when the detenues were in judicial custody. It will be interesting to mention at this stage that the detaining authority, with regard to the factum of judicial custody of each detenue, has observed that there is likelihood of the detenue moving an application for bail in the

Court of law, but this is assumed without attaining any satisfaction for reaching the conclusion for passing the detention order and even in absence of any cogent material. Nevertheless, it has been observed by the detaining authority in each case that though the detenue is in judicial custody while passing the detention order, he is likely to be released on bail. In the opinion of the Court, the excuse and the pretext that there is likelihood of presentation or submission of an application for being enlarged on bail by the detenue, ipse-facto, cannot constitute a subjective satisfaction for reaching the conclusion that there is a fit case for passing the detention order. Insofar as the provisions of Section 3 of the PASA Act are concerned, there must be cogent material available with the officer passing the detention order to the effect that the detenue is likely to be enlarged on bail. Obviously, inference must be

drawn from the available material on record and must not be ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is “likelihood to be released on bail” is different from “likelihood of his moving an application for bail”. The reasoning for likelihood of moving an application of bail by the detenue is obviously different from the likelihood to be enlarged on bail. Such a reasoning, in the opinion of the Court, cannot be said to be sufficient compliance of the requirements and safeguards as laid down under the PASA Act and various decisions of this Court as well as Hon'ble Supreme Court.“

6. In view of the law laid down by the Apex Court as relied on by this Court in subsequent decision, the concerned officer is duty bound

to arrive at the subjective satisfaction on the basis of relevant and cogent materials existing as on the date of passing the order of detention. Not only that the subjective satisfaction cannot be in the realm of imagination but to be based on relevant facts. As the apex court has rightly observed that ipse dixit of the concerned officer cannot be formed a basis for subjective satisfaction of the authority. The above mentioned two judgments and the law laid down therein, have clearly applicability to the facts of the present case, and, therefore, exercise of power by the detaining authority under the provisions of the Act is illegal and contrary to the provisions under Article 22 of the Constitution of India.

7. The order of detention dated 25.06.2005 passed by the respondent no.1, is quashed and set aside as there is total non-application of

mind on the part of the detaining authority before arriving at the subjective satisfaction.

8. The detenue Prakash Govindbhai Makwana is therefore ordered to be set at liberty forthwith, if not required in any other offence by any other authority.

9. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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